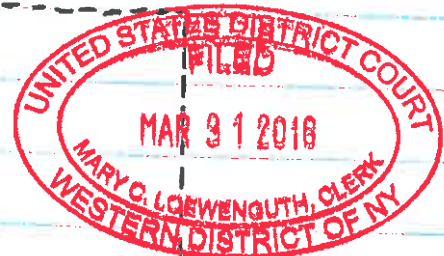


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

DARRELL GUNN

PLAINTIFF,

V.S.



COMPLAINT

Civil Action

No.

16

CV 6206

WILLIAM J. ABRUNZO, Inmate Grievance Program, Supervisor

ANTHONY J. ANNUCCI, Acting Commissioner

R. J. BALLARD, Lieutenant

BESCLER, Correction Officer

BRUSH, Correction Officer

K. BUNNELL, Correction Officer

BYNAUM, Sergeant

PAUL CHAPPIUS, JR. Superintendent

CLIFF CLAFLIN, Sergeant

A. COLES, Correction Officer

COLLMER, Sergeant

COLUMBO, Clinician Specialist, MHU

Jury Trial

Demanded

Page 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

DARRELL GUNN

PLAINTIFF,

VS.

COMPLAINT

Civil Action

No. _____

continued

DEPALO, Lieutenant

DONELY, Offender Rehabilitation Coordinator

ROBERT GESSNER, Inspector General

LOONEY, Clinician, MHU

K. MUSSAW, Lieutenant

T. PERRY, Correction Officer

POWERS, Sergeant

PAUL PICCOLO, Deputy Superintendent Security

F. SANTIAGO, Sergeant

Jury Trial

Demanded

Page 3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

DARBELL GUNN

PLAINTIFF,

VS.

COMPLAINT

Civil Action
No. _____

Continued

B. SCHIEBER, Correction Officer

J. TAYLOR, Correction Officer

UNKNOWN WHITE MALE, Sergeant-MHU

J. WENDERLICH, Deputy Superintendent Security

Jury Trial
Demanded

DEFENDANT(S).

Plaintiff states:

JURISDICTION AND VENUE

1. Plaintiff institutes these proceedings and invokes the jurisdiction of this Court under and by virtue of 28 U.S.C. Section 1343 to obtain the costs of suit, including Reasonable attorney fees, and damages suffered by plaintiff and caused by defendants' Violation of his Rights as guaranteed in the Eighth and Fourteenth Amendments to the Constitution of the United States and by Federal law, particularly 42 U.S.C. Sec. 1983.

2. This Court also has jurisdiction of this action under 28 U.S.C. Sec. 1331, in that the matter in con-

Page 5

troversty arises under the First, Fourth, Eighth, and Fourteenth Amendments of the Constitution of the United States.

3. The violation of plaintiff's rights was committed within New York State.

PARTIES

4. Plaintiff, DARRELL GUNN, D.I.N. 03-B-2443, is a citizen of the United States of America and was at all times relevant herein a prisoner of the New York State Department of Corrections and Community Supervision, incarcerated at the Elmira Correctional Facility, P.O. Box 500, Elmira, New York 14902.

Page 6

5. Defendant ANTHONY J.

ANNUCCI, Acting Commissioner, was at all times relevant herein the duly appointed, qualified and acting Commissioner of the New York State Department of Corrections and Community Supervision, and is at all times relevant herein was a resident of Albany County, Albany, New York.

6. Defendant PAUL CHAPPIUS,

Jr., Superintendent, was at all times relevant herein the duly appointed, qualified and acting Superintendent of the Elmira Correctional Facility, and is at all times relevant herein was a resident of Chemung County, Elmira, New York.

7. Defendant PAUL PICCOLO,

Deputy Superintendent For Security Services, was at all times relevant herein the duly appointed, qualified and acting Deputy

Page 7

Superintendent for Security Services of the Elmira Correctional Facility, and is at all times relevant herein was a resident of Chemung County, Elmira, New York.

8. Defendant S. J. WENDELIICH, Deputy Superintendant For Security Services was at all times relevant herein the duly appointed, qualified and acting Deputy Superintendent for Security Services of the Elmira Correctional Facility, and is at all times relevant herein was a resident of Chemung County, Elmira, New York.

9. Defendant R. J. BALLARD, Lieutenant Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Lieutenant Corrections Officer of the New York State Department of Corrections and Community Supervision,

Page 8

and is and at all times relevant herein was a resident of Chemung County, Elmira, New York.

10. Defendant DEPALO, Lieutenant Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Lieutenant Corrections Officer of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung County, Elmira, New York.

11. Defendant K. MUSSAW, Lieutenant Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Lieutenant Corrections Officer of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein

Page 9

Was a resident of Chemung County, Elmira, New York.

12. Defendant BYNAUM, Sergeant Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Sergeant Corrections Officer of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung County, Elmira, New York.

13. Defendant CLIFF CLAFLIN Sergeant Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Sergeant Corrections Officer of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung County, Elmira,

Page 10

New York.

14. Defendant COLLMER, Sergeant Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Sergeant Corrections Officer of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung, County, Elmira, New York.

15. Defendant POWERS, Sergeant Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Sergeant Corrections Officer of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung, County, Elmira, New York.

16. Defendant F. SANTIAGO,

Page 11

Sergeant Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Sergeant Corrections Officer of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung County, Elmira, New York.

17. Defendant UNKNOWN WHITE MALE, Sergeant Correction Officer for Mental Health Unit (hereinafter MHU), was at all times relevant herein a duly appointed, qualified and acting Sergeant Corrections Officer for MHU of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung County, Elmira, New York.

18. Defendant BESCLER, Correction Officer, was at all times relevant herein

Page 12

a duly appointed, qualified and acting Corrections Officer of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung County, Elmira, New York.

19. Defendant BRUSH, Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Corrections Officer of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung County, Elmira, New York.

20. Defendant K. BUNNELL, Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Corrections Officer of the New

Page 13

York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung County, Elmira, New York.

21. Defendant A. COLES, Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Corrections Officer of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung County, Elmira, New York.

22. Defendant T. PERRY, Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Corrections Officer of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of

Page 14

Chemung County, Elmira, New York.

23. Defendant B. SCHIEBER, Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Corrections Officer of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung County, Elmira, New York.

24. Defendant J. TAYLOR, Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Corrections Officer of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung County, Elmira, New York.

25. Defendant COLUMBO,

Page 15

MHU-Clinician Specialist was at all times relevant herein a duly appointed, qualified and acting MHU Clinician OF the ~~NEW~~ New York State Office OF Mental Health for Services with the New York State Department OF Corrections and Community Supervision, and is at all times relevant herein a resident OF Chemung County, Elmira, New York.

26. Defendant WILLIAM J. ABRUNZO, Inmate Grievance Program, (I.G.P.) Supervisor, was at all times relevant herein a duly appointed, qualified and acting Supervisor FOR the Inmate Grievance Program OF the New York State Department OF Corrections and Community Supervision, and is and at all times relevant herein was a resident OF Chemung County, Elmira, New York.

Page 16

27. Defendant DONELY, Offender Rehabilitation Coordinator (herein after ORC), was at all times relevant herein a duly appointed, qualified and acting ORC of the New York State Department of Corrections and Community Supervision, and is at all times relevant herein was a Resident of Chemung County, Elmira, New York.

28. Defendant ROBERT GESSNER, Inspector General, was at all times relevant herein a duly appointed, qualified and acting Inspector General of the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of New York. (County Unknown).

29. Defendant LOONEY, Clinician was at all times relevant herein a duly

Page 17

appointed, qualified and acting MHU Clinician of the New York State Office of Mental Health for services with the New York State Department of Corrections and Community Supervision, and is and at all times relevant herein was a resident of Chemung County, Elmira, New York.

30. Defendant Department of Corrections and Community Supervision is and was at all times relevant herein a division of the government of New York State.

31. Defendants WILLIAM J. ABRUNZO, I.G.P. Supervisor, ANTHONY J. ANNUCCI, Acting Commissioner, R. J. BALLARD, Lieutenant, BESCLER, Correction Officer, BRUSH, Correction Officer, K. BUNNELL, Correction Officer, BYNAUM, Sergeant, PAUL CHAPPIUS, Jr. Super-

Page 18

intendant, CLIFF CLAFLIN, Sergeant, A. COLES, Correction Officer, COLLMER, Sergeant, COLUMBO, MHU-clinician Specialist, DEPALO, Lieutenant, DONELY, ORC, ROBERT GESSNER, Inspector General, LOONEY, MHU-clinician, K. MUSSAW, Lieutenant, T. PERRY, Correction Officer, POWERS, Sergeant, PAUL PICCOLO, Deputy Superintendent for Security Services, F. SANTIAGO, Sergeant B. SCHIEBER, Correction Officer, J. TAYLOR, Correction Officer, UNKNOWN WHITE MALE, Sergeant-MHU, J. WENDERLICH, Deputy Superintendent for Security Services, are sued individually and in their official capacities. Relief is sought against each and all defendants as well as their agents, assistants, successor, employees and persons acting in concert or cooperation with them or at their direction or under their supervision.

Page 19

32. At all times relevant herein, the defendants WILLIAM J. ABRUNZO, I. G. P. Supervisor, ANTHONY J. ANNUCCI, Acting Commissioner, R. J. BALLARD, Lieutenant, BESCLER, Correction Officer, BRUSH, Correction Officer, K. BUNNELL, Correction Officer, BYNAUM, Sergeant, PAUL CHAPPIUS, Jr. Superintendent, CLIFF CLAFLIN, Sergeant, A. COLES, Correction Officer, COLLMER, Sergeant, COLUMBO, MHU-Clinician Specialist, DEPALO, Lieutenant, DONELY, ORC, ROBERT GESSNER, Inspector General, LOONEY, MHU-Clinician, K. MUSSAW, Lieutenant, T. PERRY, Correction Officer, POWERS, Sergeant, PAUL PICCOLO, Deputy Superintendent for Security Services, F. SANTIAGO, Sergeant B. SCHIEBER, Correction Officer, J. TAYLOR, Correction Officer, UNKNOWN WHITE MALE, Sergeant - MHU, J. WENDERLICH, Deputy Superintendent for security services, and their agents, assistants, and employees

Page 20

acted pursuant to the policies, regulations or decisions officially adopted or promulgated by those in the Department of Corrections and Community Supervision whose acts may fairly be said to represent official policy or were pursuant to governmental custom of the Department of Corrections and Community Supervision.

33. At all times relevant herein, defendants have acted under the color of authority of the law of New York State or in active concert with such defendants who are so acting.

PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuits

Page 21

in State or Federal Court dealing with the same facts involved in this action?

Yes

1. Name(s) of the parties to this other lawsuit:

Plaintiff: DARRELL GUNN 03-B-2443

Defendant: State of New York
(LT. PERRY, Correction Officer)

2. Court: STATE OF NEW YORK -
COURT OF CLAIMS

3. Claim No. 124108
ORI # NY001805J

4. The approximate date the action was filed:

Page 22

April 9, 2014

5. Name of Judge whom case was assigned.

Hon. Richard E. Sise, Acting Presiding Judge

6. Disposition of the case is still pending.

7. Name(s) of the parties to this other lawsuit:

Plaintiff: DARRELL GUNN 03-B-2443

Defendant: STATE OF NEW YORK
(Sgt. Cliff Claflin)

8. Court: STATE OF NEW YORK -
COURT OF CLAIMS

Page 23

9. Claim No. 124149
ORI# NY001805J

10. The approximate date the action
was filed:

April 16, 2014

11. Name of Judge whom case was
assigned.

Hon. Richard E. Sise, Acting Presiding
Judge

12. Disposition of the case is still
pending

13. Name(s) of the parties to this
other lawsuit:

Plaintiff: DARRELL GUNN 03-B-2443

Page 24

Defendant: STATE OF NEW YORK
(BESCLER, Correction Officer)

14. Court: STATE OF NEW YORK -
COURT OF CLAIMS

15. Claim No. 125097
ORI# NY001805J

16. The approximate date the action
was filed:

October 24, 2014

17. Name of Judge whom case was
assigned:

Hon. Catherine C. Schaeve

18. Disposition of the Case:

Page 25

Claimant's motion for a default judgment is denied in its entirety.

Dated March 17, 2016

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

No

COUNT ONE

19. On March 29, 2013 plaintiff was en route to recreation location - Gymnasium at approximately 7:00 p.m. in the G-Block pivot, Main Hall - Laundry Corridor.

20. Plaintiff turned right walking through

Page 26

magnetometer on the left side of corridor -- compulsorily for all prisoners to walk through en route to recreation location.

21. Meanwhile, BESCLER, correction officer was standing at magnetometer. Also, T. PERRY, correction officer was standing off to right and near the wall on right side of corridor and at the end of magnetometer.

22. In addition, CLIFF CLAFLIN, Sergeant was standing near T. PERRY, correction officer.

23. Simultaneously, without any detection, alarm, and/or signal plaintiff exited magnetometer.

24. Here, T. PERRY, correction officer signaled plaintiff for a needless pat frisk without giving plaintiff a reason per DOCCS

Page 27

Departmental Directive #4910 Section B-2-a (4), (5).

25. Indeed, plaintiff placed both his hands on wall, in so doing, T. PERRY, Correction Officer ordered plaintiff to step back further. Plaintiff complied.

26. Hereupon, C.O. T. PERRY violently and nefariously kicked plaintiff in right foot.

27. T. PERRY, correction officer barbaric actions are contrary to DOCCS Departmental Directive #4910 Section III Personal Searches; which states in part:

The employee conducting a personal search must assure its thoroughness and not to offend the dignity of the inmate being searched.

Page 28

28. At that time, plaintiff's right foot began to hurt and swell-up. The pain was intense sharp and throbbing.

29. T. PERRY, correction officer unprovoked committed battery against plaintiff.

30. For this reason, plaintiff immediately stepped back even further. Even so, he was losing his balance.

31. So now T. PERRY, correction officer began removing the items from plaintiff pant pockets, viz., ink pen, ID, phonebook, and handkerchief.

32. Then T. PERRY, correction officer then grabbed plaintiff's underwear boxer's and violently pulled up - into the groin and rectum. Herewith, C.O. PERRY, similarly repeated, violently pulled plaintiff's pant

Page 29

into his groin and rectum.

33. Needless to say, plaintiff felt horrible pain.

34. Consequently, plaintiff states: "I'm in pain!"

35. In response, "Shut the fuck-up!" said T. PERRY, correction officer.

36. "You pulled my underwear into my groin area!" Plaintiff's remonstrance was ignored.

37. Meanwhile, T. PERRY, correction officer is violently pat frisking plaintiff, in sum, touching, rubbing, grabbing, and squeezing plaintiff's extremities, chest, genitals, buttocks, and clothes.

38. As it happens, T. PERRY, correction

Page 30

Officer violently grabbed plaintiff's genitals-- as a result, plaintiff moved his leg distraughtly. In effect, C.O. PERRY held on to plaintiff's genitals, at the same time, stating: "I'm not grabbing you!"

39. Hereto, together, as impugnement of plaintiff's remonstrance the incorrigible T. PERRY, correction officer immediately once again, grabbed plaintiff's underwear boxer's and violently pulled up, then, repeated again further into his groin and rectum.

40. Sure enough, T. PERRY, correction officer, wantonness and unnecessary infliction of undue hardships caused plaintiff ineffable pain.

A violation of United States Constitution Fourth and Eighth Amendment.

Page 31

41. Suddenly plaintiff looked to the left undoubtedly to see Sergeant CLIFF CLAFLIN standing, thereabout two feet away. Witnessing this, whom, condoned and allowed this atrocious behavior.

42. All things considered, plaintiff conscience was in shock to see Sgt. CLAFLIN, concomitantly, participating in the pat Frisk, in effect, intentionally and deliberately using his body to shield/block any potential witnesses from observing the pat Frisk and sexual assault.

43. Noting that, T. PERRY, correction Officer ordered plaintiff to face forward. Plaintiff complied.

44. Most critically, T. PERRY, correction Officer, still for his sexual gratification again began to needlessly maliciously

Page 32

and Sadistically and violently rubbed and touched and grabbed and squeezed plaintiff's genitals, rectum, and buttock malignantly, back and forth, with both of his hands at the same time.

A violation of United States Constitution Fourth Amendment and Eighth Amendment.

45. At that same time, plaintiff stood aghast as C.O. PERRY'S finger penetrated his rectum through plaintiff's clothes, and, in so doing, caused plaintiff unwarranted wanton infliction of pain and serious physical injury and psychological trauma and emotional duress, among other things.

A violation of United States Constitution Eighth Amendment.

Page 33

46. With this in mind, plaintiff felt despair, and ineffable pain, and humiliation, anger, degradation, embarrassment, ashamed, insecure, dehumanized, mental anguish, and loss of dignity.

47. But then, T. PERRY, correction Officer removed plaintiff's right sneaker, checked it, BESCLER, correction Officer, assisted, whom, ran a hand held metal-detector wand over the sneaker. Where-upon, no alarm or reaction what-so-ever.

48. Hereto, T. PERRY, correction Officer, used both hands to check plaintiff foot.

49. T. PERRY, correction Officer, placed the sneaker on the floor. Telling plaintiff to place his foot back inside. Plaintiff complied.

50. T. PERRY, correction Officer and

Page 34

BESCLER, correction officer both similarly did plaintiff's left foot as noted above.

51. T. PERRY, correction officer, returned the contents of plaintiff's pockets viz., ink pen, ID, phonebook, and handkerchief.

52. Hereupon, T. PERRY, correction officer, ordered plaintiff, "take it back to your cell."

53. Plaintiff, immediately asked C.O. PERRY, "What is your name?"

54. T. PERRY, correction officer, in response, "PERRY" -- wherewith, in innuendo, "make sure you get it right."

The constitutional basis for this claim under 42 U.S.C. sec. 1983 is the Fourth Amendment; Eighth Amendment; and

Page 35

Fourteenth Amendment.

55. The acts of the defendants, and each of them, subjected plaintiff to unreasonable search in violation of the Fourth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$ 250,000.

56. The acts of defendants, and each of them, subjected plaintiff to cruel and unusual punishment, causing plaintiff injuries, including, rectum hemorrhoid lastly over six months, soreness, swelling, internal bleeding, burning, discomfort, abrasion, still, on going's of irritation, discomfort, abrasion, during bowel movements and to suffer extreme physical pain and mental anguish and humiliation and degradation, depression, stress, loss of sleep, nightmares, anxiety, embarrass-

Page 36

ment, emotional duress, and anger, a life changing episode, permanently mentally scarred, the full extent of which cannot be measured in violation of the Eighth and Fourteenth Amendments of the United States Constitution and caused plaintiff to suffer damages in the sum of \$ 5,000,000

WHEREFORE, plaintiff respectfully prays this Court to:

a) permanently enjoin the defendants, their, assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;

Page 37

b) grant compensatory damages to plaintiff in the sum of \$ 5, 250, 000;

c) grant punitive damages to plaintiff in the sum of \$ 10, 000, 000;

d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies For This Claim:

Plaintiff did grieve and appeal this claim

Grievance Number EL40777-13-- Title --
SEXUALLY VIOLATED VIA PAT FRISK
dated April 11, 2013

Superintendent denied the grievance

Page 38

On appeal Central Office Review Committee (hereinafter CORC) did grant Grievant's Request Unanimously Accepted In Part.

Also, this claim is not a Prison Condition. No exhaustion requirement is needed.

COUNT TWO

57. Plaintiff adopts by reference paragraphs 1 through 33

58. Plaintiff searched for witnesses as plaintiff's mind was inundated with fear, pain, and humiliation, only to see CLIFF CLAFLIN standing there with his hat on.

59. Here, CLIFF CLAFLIN, area Supervisor sergeant deliberate indifference to plaintiff's risk of serious harm was

Page 39

lucid by showing personal involvement, that is, participating, using his body to block/shield the pat Frisk / sexual assault to any potential witnesses.

60. Certainly Sgt. CLIFF CLAFLIN neglect of duty was a failure to protect plaintiff's undue hardship from C.O. PERRY wanton infliction of pain and malicious and sadistic behavior.

61. Overall Sgt. CLIFF CLAFLIN ignored plaintiff's statement: "I'm in pain!" during a non-emergency, non-threatening, suspicionless, clothed body pat Frisk that was conducted abusively and without a good-faith effort.

62. In this way, Sgt. CLIFF CLAFLIN as area supervisor directly became involved and failed to act, to protect or prevent by

Page 40

disregarding excessive serious risk to plaintiff's health and safety together with grossly negligent in supervising subordinate T. PERRY, correction officer, who sexually assaulted claimant.

The Constitutional basis for this claim under 42 U.S.C. Sec. 1983 is the ~~Eighth~~ Amendment and Fourteenth Amendment.

63. The acts of the defendants, and each of them, subjected plaintiff to a failure to protect in violation of the Eighth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$ 250,000

64. The acts of defendants, and each

Page 41

OF them, subjected plaintiff to Substantial risk of serious harm -- causing plaintiff physical pain and injury, viz., rectum hemorrhoid, soreness, swelling, internal bleeding, burning, discomfort, abrasion, still, on goings of irritation, during bowel movements, stomach knots, loss of appetite, nervousness, loss of self-esteem, irritability, and frequent headaches, including traumatic psychological injury, emotional duress, and anger, a life changing episode, permanently mentally scarred, the full extent of which cannot be measured in violation of the Eighth and Fourteenth Amendments of the United States Constitution and caused plaintiff to suffer damages in the sum of \$ 250,000

WHEREFORE, plaintiff respectfully prays this court to:

Page 42

- a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the constitution of the United States of America;
- b) grant compensatory damages to plaintiff in the sum of \$1,000,000;
- c) grant punitive damages to plaintiff in the sum of \$2,000,000
- d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies
For This Claim!

Page 43

Plaintiff did grieve and appeal this claim.

Grievance Number EL40777-13 -- Title --
SEXUALLY VIOLATED VIA PAT FRISK
dated April 14, 2013

Superintendent denied the grievance

On appeal Central Office Review Committee
(hereinafter (ORC) did grant Grievant's
Request Unanimously Accepted In Part.

Also, this claim is not a prison condition.
No exhaustion requirement is needed.

COUNT THREE

65. Plaintiff adopts by reference paragraphs
1 through 33

Page 44

66. Now, plaintiff heads back to his cell.

67. At this time, while plaintiff was en route back to his cell. BESCLER, correction officer, immediately without justification, wearing black boots - inimically and malevolently kicked plaintiff in the left leg shin. In so doing, practically tripping plaintiff and provoking plaintiff to be brutally assaulted by T. PERRY and Sgt. CLIFF CLAFLIN who were all still there at the magnetometer.

68. BESCLER, correction officer, battery against plaintiff caused plaintiff more injuries e.g. swelling, soreness, sharp pain, bruising and scarring and to suffer even more so.

A violation of United States Constitution Eighth Amendment and Fourteenth Amendment.

69. Not surprisingly, BESCLER, correction

Page 45

Officer treated plaintiff without dignity, hence, witnessing plaintiff being sexually assaulted. Hereupon, plaintiff became anathema to C.O. BESCLER, as a result, causing intentional physical and emotional harm.

70. Not only that, BESCLER, Correction Officer whom witnessing the sexual assault was grossly negligent when he failed to act, to protect or prevent by disregarding excessive risk of serious harm plaintiff's health and safety.

A violation of United States Constitution Fourteenth Amendment.

The Constitutional basis for this claim under 42 U.S.C. sec. 1983 is the Eighth Amendment and Fourteenth Amendment.

Page 46

71. The acts of the defendants, and each of them, subjected plaintiff to a battery in violation of the Eighth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$ 1,000,000

72. The acts of the defendants, and each of them, subjected plaintiff to a failure to protect in violation of the Eighth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$ 250,000.

73. The acts of the defendants, and each of them, subjected plaintiff to substantial risk of serious harm -- causing plaintiff physical pain and injury, viz., rectum hemorrhoid, soreness, swelling, internal bleeding, burning, discomfort, abrasion, still, on goings, of irritation, during bowel movements,

Page 47

Stomach Knots, loss of appetite, nervousness, loss of self-esteem, irritability, and frequent headaches, including traumatic psychological injury, emotional duress, and anger, a life changing episode, permanently mentally scarred, the full extent of which cannot be measured in violation of the Eighth and Fourteenth Amendments of the United States Constitution and caused plaintiff to suffer damages in the sum of \$ 250,000.

WHEREFORE, plaintiff respectfully prays this Court to:

a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the

Page 48

United States of America;

b) grant compensatory damages to plaintiff in the sum of \$1,000,000;

c) grant punitive damages to plaintiff in the sum of \$2,000,000;

d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies For This Claim:

Plaintiff did grieve and appeal this claim.

Grievance Number EL40803-13--Title--
KICKED AND PROVOKED
dated April 18, 2013

Page 49

Superintendent denied the grievance.

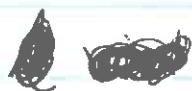
On appeal CORC did grant Grievant's Request Unanimously Accepted ~~In~~ Part.

Also, this claim is not a prison condition. No exhaustion requirement is needed.

COUNT FOUR

74. Plaintiff adopts by reference paragraphs 1 through 33

75. On March 29, 2013 still that evening T. PERRY, correction Officer, without justification, among other things, placed plaintiff on keeplock-cell confinement for two (2) days.



Page 50

A violation of United States Constitution Eighth Amendment

76. Meanwhile plaintiff was in his cell suffering from emotional duress and psychological trauma and felt noxious and disgusted; could not sleep; genitals swelled-up and throbbed; rectum throbbed and felt abrasion and pain inside and outside rectum and soreness.

77. For this reason, plaintiff took his prescribed medication for pain and ^{anti}inflammation - NAPROXEN for relief of pain and suffering.

78. Notwithstanding plaintiff put in sick call request on March 30, 2013 and March 31, 2013.

79. In any event, plaintiff was denied shower and recreation and law library call-outs.

Page 51

80. Plaintiff was given no reason or written report.

81. Moreover, significant and compelling, there was no disturbance or other emergency circumstance.

82. This means that, Paul Chappius, Jr., Superintendent, was not given notice or report per Official Compilation of Codes, Rules and Regulations of the State of New York, Title 7, Department of Corrections and Community Supervision (hereinafter 7 CRR-NY) Section 251-1.3 which states in pertinent part:

Section 251-1.3. Reports of use of physical force.

(a) An employee who has used physical force on an inmate shall make a

Page 52

Written report in prescribed form immediately to the Superintendent.

and 7CRR-NY Section 251-1.6 (e), (1)(2), in pertinent part states:

(e)

(1) An employee who places an inmate in confinement in his cell or room or who places an inmate in a special housing unit pursuant to the provisions of this section shall report such fact, in writing, to the Superintendent as soon as possible, but in any event before going off duty.

(2) Reports of confinement shall be made even where confinement was authorized or directed by a superior officer, but need not be made where confinement:

Page 53

(i) is necessitated by a medically excused inability to participate in an assigned activity;

or

(ii) was directed by a decision in a disciplinary superintendent's hearing.

83. Therefore, on this point, it is imperative T. PERRY, correction officer, must follow their own rules.

84. All things considered, T. PERRY, correction officer, did give plaintiff unlawful cell confinement, in so doing, plaintiff was unjustly denied general population daily activities.

A violation of United States Constitution Eighth Amendment.

Page 54

The constitutional basis for this claim under 42 U.S.C. sec. 1983 is the Eighth Amendment.

85. The acts of the defendants, and each of them, subjected plaintiff to unlawful cell confinement in violation of the Eighth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$20,000.

WHEREFORE, plaintiff respectfully prays this court to:

a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the constitution of the United States

Page 55

OF America ;

b) grant compensatory damages to plaintiff in the sum of \$ 20,000;

c) grant punitive damages to plaintiff in the sum of \$ 20,000;

d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees;

Exhaustion of Your Administrative Remedies For This Claim:

Plaintiff did grieve and appeal this claim.

Grievance Number EL40798-13-- Title --
KEEPLOCK / MISSED CALL-OUTS
dated April 16, 2013

Page 56

Superintendent denied the grievance

On appeal CORC did grant Grievant's Request
Unanimously Accepted In Part.

Also, this claim is not a prison condition.
No exhaustion requirement is needed.

COUNT FIVE

85. Plaintiff adopts by reference paragraphs 1 through 33.

86. Indeed on March 31, 2013 approximately 9 p.m. in G-Block plaintiff was let out his 5-company, Cell-20 -- for a Sergeant interview for sexual assault.

87. Plaintiff en route down at bottom of

Page 57

of the stairs J. TAYLOR, correction officer, standing in prison guards office ordered plaintiff "Sit on bench, Rat!" in front of the several inmates in the G-Block -- Bench and inmate telephone area.

88. Consequently, J. TAYLOR, correction officer egregious actions and incorrigible behavior has put plaintiff's life, safety, and well being at risk.

89. A violation of United States Constitution First Amendment.

90. As a result, causing plaintiff high levels of stress, anxiety, depression, and needless degradation.

The constitutional basis for this claim under 42 U.S.C. Sec. 1983 is the

Page 58

First Amendment.

91. The acts of the defendants, and each of them, subjected plaintiff to serious risk of harm from inmates and prison guards, prison officials, and prison staff alike, inter alia, high levels of stress, anxiety, depression, and needless degradation contrary to legitimate penological interest, correctional goals, and prison policy, procedure, rules and regulations in violation of the First Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$ 1,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

a) permanently enjoin the defendants, their assistants, successors, employees

Page 59

and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;

b) grant compensatory damages to plaintiff in the sum of \$ 2,000,000;

c) grant punitive damages to plaintiff in the sum of \$ 2,000,000;

d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees;

Exhaustion of Your Administrative Remedies For This Claim:

Plaintiff did grieve and appeal this claim.

Page 60

Grievance Number EL40801-13--Title--
ORDERED TO BENCH
dated April 17, 2013

Superintendent denied the grievance

On appeal CORC did grant Grievant's
Request Unanimously Accepted In Part.

Also, this claim is not a prison condition.
No exhaustion requirement is needed.

COUNT SIX

91. Plaintiff adopts by reference
paragraphs 1 through 33.

92. For the most part, on March 31,
2013 approximately 9 p.m. plaintiff was

Page 61

let out his 5-company, cell-20 -- for a Sergeant interview for sexual assault.

93. Plaintiff entered G-Block sergeant's Office to discover Sergeant DAVIS sitting down behind the desk and K. BUNNELL, correction officer standing to her side.

94. Plaintiff took a seat at the desk across from Sgt. DAVIS. Here, plaintiff was instructed by both sergeant DAVIS and K. BUNNELL, correction officer, simultaneously, "write a statement -- "only describe the pat Frisk. "

95. Wherewith, plaintiff, told Sgt. DAVIS, "C.O. TAYLOR - "just called me a. "rat " in front of the inmates in the G-Block Bench and Telephone area when I sat down on the bench. "

Page 62

96. In response, Sgt. DAVIS told plaintiff, "I'm not here for that. Only the allegations of Sexual assault."

97. Here, K. BUNNELL, Correction Officer, stated: "you must be going to P.C." in a threatening innuendo.

98. Further, K. BUNNELL, Correction Officer, demanded -- "Start writing now!" Plaintiff complied.

99. Plaintiff thought there is no confidentiality with C.O. BUNNELL in the sergeant's office.

100. Further, K. BUNNELL, Correction Officer, told plaintiff "Stop writing and let the sergeant read it."

101. Plaintiff explained, "I'm not

Page 63

finished. Don't you believe me?" Plaintiff said, pertaining only to the pat frisk.

102. K. BUNNELL took paper from plaintiff then handed it to Sgt. DAVIS.

103. K. BUNNELL, correction officer continuous display of antagonism, intimidation, chastisement, and coercion made plaintiff feel like it was his fault and did something wrong, insofar, as plaintiff was put under tremendous stress, anxiety and depression.

A violation of the United States Constitution First Amendment.

104. Sergeant DAVIS asked plaintiff if he was penetrated by officer PERRY.

105. "YES!" "I was penetrated in my rectum through my clothes," said plaintiff.

Page 64

106. Hitherto, Sergeant DAVIS, Correction Officer, asked if plaintiff had witnesses. In response, "~~I~~ don't need a witness," said plaintiff.

107. Plaintiff was again asked by C.O. BUNNELL "do you have witnesses?" Plaintiff gave no response.

108. Sergeant DAVIS asked plaintiff if he had witnesses again.

109. Plaintiff stated: "no comment." Sgt. Davis said, "I'm going to write down no witnesses."

110. Thereupon, plaintiff was allowed back into his cell after Sergeant DAVIS interview.

The constitutional basis for this

Page 65

claim under 42 U.S.C. sec. 1983 is the First Amendment.

111. The acts of the defendants, and each of them, subjected plaintiff to continuous display of antagonism, intimidation, chastisement, and coercion made plaintiff feel like it was fault and did something wrong, insofar, as plaintiff was put under tremendous stress, anxiety and depression during PREA investigation for Free speech in violation of the First Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$1,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

a) permanently enjoin the defendants,

Page 66

and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the constitution of the United States of America;

b) grant compensatory damages to plaintiff in the sum of \$2,000,000;

c) grant punitive damages to plaintiff in the sum of \$2,000,000;

d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees;

Exhaustion of Your Administrative Remedies For This Claim:

Plaintiff did not grieve this claim.

Page 67

Also, this claim is not a prison condition.
No exhaustion requirement is needed.

COUNT SEVEN

112. Plaintiff adopts by reference paragraphs 1 through 33.

113. Shortly thereafter the Sgt. DAVIS interview on March 29, 2013 at approx. 9:30 p.m. plaintiff was descending the stairs, and, one of two Inmate Liaison Committee representatives asked if plaintiff was okay, while plaintiff was being escorted by BRUSH, Correction Officer. Plaintiff said, "No!" I was sexually assaulted!" as plaintiff continued down the stairs.

Page 68

114. Thereupon, near G-Block exit door standing by inmate telephone and Bench area waiting is Sergeant Davis and G. AUDINWOOD, correction Officer to take plaintiff to facility hospital.

115. Escort C.O. G. AUDINWOOD ordered -- "put your hands in your pockets." Plaintiff complied.

116. Before walking out the door, Sergeant DAVIS observed plaintiff had Slippers on. She questioned C.O. K. BUNNELL, "Can he wear slippers outside to the hospital?" C.O. BUNNELL said, "yes." In which, Sgt. DAVIS ordered plaintiff to go back to his cell to put some shoes on. Escorting C.O. G. AUDINWOOD stated, "State boots."

117. All told, as plaintiff was exiting

Page 69

company wearing state boots -- from re-
turning to cell. BRUSH, correction officer,
is waiting for plaintiff and tells plaintiff
"put your hand behind your back."
Plaintiff complied.

118. BRUSH, correction officer, began
chastising plaintiff for informing the two
Inmate Liaison Committee Representatives
about the sexual assault.

119. BRUSH, correction officer, disdain-
fully stated: "don't you ever say anything in
front of me about my 'Brother' of that bull-
shit sexual assault!; that's not right!;" --
"just don't do that in front of me!;"
"Do you understand me!" As he was getting
more upset and irate, he repeated,
"do you understand me!;" And then told
plaintiff "get the fuck-out-of-here!"
Plaintiff complied, went down stairs to get

Page 70

escorted to hospital.

A violation of United States
Constitution First Amendment.

120. AS a result, causing plaintiff
high levels of stress, anxiety, depression,
and needless degradation.

The constitutional basis for
this claim under 42 U. S. C. Sec. 1983 is
the First Amendment.

121. The acts of the defendants,
and each of them, subjected plaintiff to
denial of free speech, inter alia, high
levels of stress, anxiety, depression,
and needless degradation contrary to
legitimate penological interest, correc-
tional goals, and prison policy, procedure,
rules and regulations in violation of the

Page 71

First Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$1,000,000.

WHEREFORE, plaintiff respectfully prays this court to:

a) permanently enjoin the defendants, their assistants, successors, employees and person acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the constitution of the United States of America;

b) grant compensatory damages to plaintiff in the sum of \$2,000,000;

c) grant punitive damages to plaintiff in the sum of \$2,000,000;

Page 72

d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees;

Exhaustion of Your Administrative Remedies For This Claim:

Plaintiff did grieve and appeal this claim.

Grievance Number EL40802-13--Title--
INTIMIDATED BY OFFICER
dated April 18, 2013.

Superintendent denied the grievance.

On appeal CORC did grant Grievant's
Request Unanimously Accepted In Part.

Also, this claim is not a prison condition.
No exhaustion requirement is needed.

Page 73

COUNT EIGHT

122. Plaintiff adopts by reference paragraphs 1 through 33.

123. Here, on March 31, 2014 at approximately 9:30 p.m. plaintiff arrived to clinic for PREA medical Examine.

124. First plaintiff answered questions and signed a statement on the medical report. Thus, Nurse asked: "Why you didn't report the night of the sexual assault to someone. "I don't trust the C.O.'s," plaintiff said. The Nurse said, "you should request emergency sickcall when something like this occurs. In response, plaintiff always believed that "emergency sick-call" was only for life threatening situations. Then the Nurse told plaintiff, "lie and say you

Page 74

have chest pains. "

125. Furthermore, Nurse gives plaintiff medical examine. That is, checked his genitals and rectum.

126. Plaintiff observed a male nurse and female nurse and Four (4) prison guards and sgt. DAVIS in the medical examine room.

127. There was no confidentiality what-so-ever!

128. Finally plaintiff was given acetaminophen and a bag of ice with instruction for the injuries and pain.

129. But then, on April 1, 2013, approx. 5 p.m. T. PERRY, correction officer after

Page 75

returning from recreation and escorting 5-company - where plaintiffs locks in cell 20; and while taking chow list intentionally excluded plaintiff in retaliation - denied plaintiff evening chow (meal). Not surprisingly the other prison guards were in cohort with not letting plaintiff out for chow.

A violation of United States Constitution Eighth Amendment and Fourteenth Amendment.

130. As a result, causing plaintiff undue hardships, among other things, high levels of stress, anxiety, depression, and needless degradation.

The constitutional basis for this claim under 42 U.S.C. sec. 1983 is the Eighth Amendment and Fourteenth Amendment.

131. The acts of the defendants, and

Page 76

each of them, subjected plaintiff to denial of evening meal in retaliation for reporting sexual assault, inter alia, undue hardship, high levels of stress, anxiety, depression, and needless degradation in violation of the Eighth Amendment and Fourteenth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$500,000.

WHEREFORE, plaintiff respectfully prays this court to:

a) permanently enjoin the defendants, their assistants, successors, employees and person acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the constitution of the United States of America;

Page 77

- b) grant compensatory damages to plaintiff in the sum of \$ 1,000,000;
- c) grant punitive damages to plaintiff in the sum of \$1,000,000;
- d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees;

Exhaustion of Your Administrative Remedies For This Claim:

Plaintiff did grieve and appeal this claim.

Grievance Number EL40600-13--Title--
DENIED MEAL / RETALIATION
dated April 16, 2013

Superintendent denied the grievance.

Page 78

On appeal CORC did grant Grievant's Request Unanimously Accepted In Part.

Also, this claim is not a prison condition. No exhaustion requirement is needed.

COUNT NINE

132. Plaintiff adopts by reference paragraphs 1 through 33.

133. Even more importantly, on April 4, 2013, plaintiff was examined by JILL NORTHUP, Nurse Practitioner, with these results, plaintiff has been diagnosed with a rectum hemorrhoid from sexual assault injury.

134. Plaintiff was given hemorrhoidal ointment for treatment. Also, was referred

Page 79

to Mental Health Unit.

135. Thereafter, on April 11, 2013, plaintiff seen LOONEY, clinician for Mental Health Unit, thereof, the size of the offence was not taken seriously.

136. Witnessing this, plaintiff seen LOONEY, clinician for MHU struggling to hold back from laughing in plaintiff face during the interview.

137. Here, plaintiff requested C.O. PERRY be arrested and stated: "how can I file criminal charges against C.O. Perry?"

138. LOONEY, clinician for MHU stated "I don't know how you can file charges."

Page 80

A violation of United States Constitution
First Amendment and Fourteenth Amendment.

By all plaintiff's rights, the constitutional basis for this claim under 42 U.S.C. Sec. 1983 is the First Amendment and Fourteenth Amendment.

139. The acts of the defendants, and each of them, subjected plaintiff to denial of due process and equal protection to have T. PERRY, correction officer arrested and to denial of filing criminal charges against T. PERRY, correction officer, the full extent of which cannot be measured in violation of the First and Fourteenth Amendments of the United States Constitution and caused plaintiff to suffer damages in the sum of \$50,000.

Page 81

WHEREFORE, plaintiff respectfully prays this Court to:

- a) permanently enjoin the defendants, their, assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the constitution of the United States of America;
- b) grant compensatory damages to plaintiff in the sum of \$100,000;
- c) grant punitive damages to plaintiff in the sum of \$150,000;
- d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Page 82

Exhaustion of Your Administrative Remedies
For This Claim:

Plaintiff did not grieve this claim.

Also, this claim is not a Prison Condition.
No exhaustion requirement is needed.

COUNT TEN

140. Plaintiff adopts by reference paragraphs 1 through 33.

141. On April 19, 2013 approximately 9:30 a.m. plaintiff from his G-Block, 5-Company, Cell-~~20~~ was en route to the G-Block sergeant office.

142. Now, plaintiff at bottom of stairs

Page 83

witnessed J. TAYLOR, correction officer standing in prison guard station, here, J. TAYLOR, correction officer called plaintiff "snitch" in front of several prison guards and several inmates that all in the same area.

A violation of the United States Constitution First Amendment and Fourteenth Amendment.

By all plaintiff's rights, the constitutional basis for this claim under 42 U.S.C. Sec. 1983 is the First Amendment and Fourteenth Amendment.

14~~9~~. The acts of the defendants, and each of them, subjected plaintiff to serious risk of harm from inmates and prison guards, prison officials, and prison staff alike, inter alia, high levels of stress,

Page 84

anxiety, depression, and needless degradation contrary to legitimate penological interest, correctional goals, and prison policy, procedure, rules and regulations, the full extent of which cannot be measured in violation of the First Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$1,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;

Page 85

b) grant compensatory damages to plaintiff in the sum of \$500,000;

c) grant punitive damages to plaintiff in the sum of \$500,000;

d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies For This Claim:

Plaintiff did not grieve this claim

Also, this claim is not a prison condition.
No exhaustion requirement is needed.

COUNT ELEVEN

Page 86

144. Plaintiff adopts by reference paragraphs 1 through 33.

145. On April 19, 2013, Sergeant POWERS conducted grievance complaint number EL40798-13 -- KEELOCK/MISSED CALLOUTS, investigation interview with plaintiff approx. 9:30 a.m.

146. He at G-Block Sergeant's office plaintiff sitting across the desk of Sgt. J. POWERS whom tried to convince plaintiff to sign-off on the grievance complaint.

147. Plaintiff refused to sign-off on the grievance complaint.

148. Hereupon, J. POWERS, sergeant became upset, as he said, "you're going to have a rough bid! For writing grievances. Do you have anything to add."

Page 87

149. Plaintiff stated: "yes" C.O. TAYLOR called me a "snitch" when I was let into this office just now. Also, I would like to see MHU. "

150. That said, Sergeant J. POWERS refused to include plaintiff's added statement to the grievance complaint. Also, refused to make a referral to MHU for plaintiff. Among other factors, submitted a deluded and false investigation report to cover up these incorrigible prison guards wrong doing in DOCCS 'Brotherhood' culture of dishonesty.

A violation of the United States Constitution First Amendment and Fourteenth Amendment.

By all plaintiff's rights the constitutional basis for this claim under 42 U. S. C.

Page 88

Sec. 1983 is the First Amendment and Fourteenth Amendment.

151. The acts of the defendants, and each of them, subjected plaintiff to discriminating, bias, partial, corrupted, untruthful, and unfair grievance complaint investigation, inter alia, high levels of stress, anxiety, depression, and needless degradation contrary to legitimate penological interest, correctional goals, and prison policy, procedure, rules and regulations, the full extent of which cannot be measured in violation of the First Amendment and Fourteenth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$1,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

Page 89

- a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the constitution of the United States of America;
- b) grant compensatory damages to plaintiff in the sum of \$500,000;
- c) grant punitive damages to plaintiff in the sum of \$500,000;
- d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies For This Claim:

Page 90

Plaintiff did not grieve this claim.

Also, this claim is not a prison condition.
No exhaustion requirement is needed.

COUNT ELEVEN

152. Plaintiff adopts by reference paragraphs 1 through 33.

153. On April 19, 2013, in the evening plaintiff was let out his G-Block, 5-Company, Cell-20 for a F. SANTIAGO, sergeant grievance complaint - EL40801-13-- ORDERED TO BENCH, investigation interview.

154. Here, at G-Block sergeant's office door were two white male prison guard waiting for plaintiff. One prison guard states

Page 91

"be careful, he doesn't like pat frisk."

155. Hereupon, I was ordered to place my hands on the wall. Plaintiff complied.

156. Then during this needless pat frisk plaintiff a 6'2, 350 lb., white male prison guard for his sexual gratification and retaliation used his penis through his clothes directly rubbing against plaintiff buttock and legs causing plaintiff to feel the penis of the prison guard through his clothes.

157. Plaintiff's mind raced with fear as he was being set-up.

158. When this sexual abuse pat frisk was over plaintiff was ordered to go into Sergeant's office. Plaintiff complied.

159. Then plaintiff sat in chair directly across

Page 92

the desk from F. SANTIAGO, sergeant.

160. Plaintiff was completely in fear, despair, and humiliation.

161. Suddenly, the 350 lb. prison guard called in Sgt.'s office through the door - Sgt. "do you need help?" A threatening innuendo.

162. Sgt. F. SANTIAGO answered, "no thank you. I'm alright. Keep the door closed." Hereupon, stating to plaintiff - "You've been down for a while. Are you a rat?"

163. Plaintiff answered "No. I'm not a rat."

164. Sgt. F. SANTIAGO looking over the grievance papers says "You're a writer." You don't have to write grievance, write me if you have a problem with an officer and I'll

Page 93

take care of it. You can go back to your cell now."

A violation of the United States Constitution First Amendment, Fourth, Eighth and Fourteenth Amendment.

By all plaintiff's rights the constitutional basis for this claim under 42 U.S.C. Sec. 1983 is the First Amendment and Fourth, Eighth and Fourteenth Amendment.

165. The acts of the defendants, and each of them, subjected plaintiff to sexual abuse, inter alia, discriminating, bias, partial, corrupted, untruthful, and unfair grievance complaint investigation causing high levels of stress, anxiety, fear, depression, despair, humiliation, and needless degradation contrary to legitimate penological interest, correctional goals, and prison policy, procedure, rules and regulations, the full extent

Page 94

of which cannot be measured in violation of the First, Fourth, Eighth, and Fourteenth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$2,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

- a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the constitution of the United States of America;
- b) grant compensatory damages to plaintiff in the sum of \$4,000,000;

Page 95

c) grant punitive damages to plaintiff in the sum of \$4,000,000;

d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies For This Claim:

Plaintiff did not grieve this claim.

Also, this claim is not a prison condition.
No exhaustion requirement is needed.

COUNT TWELVE

166. Plaintiff adopts by reference paragraphs 1 through 33.